

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION,

Complainant,

No. 2019-ACO-02

v.

DEPARTMENT OF CORRECTIONS,  
Respondent.

**ADMINISTRATIVE COMPLIANCE ORDER**

Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-10, and the Drinking Water Regulations (“DW Regulations”), 20.7.10 NMAC, the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Water Protection Division of the NMED, issues this Administrative Compliance Order (“Order”) to Department of Corrections (“Respondent”) to enforce the EIA and DW Regulations.

**FINDINGS**

1. The NMED is an executive agency within the government of the State of New Mexico and is charged with administration and enforcement of the EIA and DW Regulations.
2. Respondent owns and operates a public drinking water system (“System”) Springer Correctional Facility, PWS# NM3500104, located in Colfax County, New Mexico.
3. The System is a Non-Transient Non-Community water system, as defined by Section 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2], that regularly provides piped drinking water to approximately three hundred (300) users and has approximately one (1) service connection to serve these users.
4. Respondent, Department of Corrections, is a “person” as defined by the EIA, NMSA 1978, § 74-1-3 and 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2].

EXHIBIT

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5. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.64(b)(2)(i) and 141.620(d)], defines the Total Trihalomethanes (TTHM) Maximum Contaminant Level (MCL) of 0.080 mg/L and establishes compliance with the MCL for TTHM is determined by calculating the Locational Running Annual Average (LRAA).

6. On October 31, 2017, a Notice of Violation (NOV) was issued to Respondent by NMED for exceeding the TTHM MCL LRAA at the TTHM-1 (Programs Building) and HAA5-1 (Laundry) sampling sites during the third (3<sup>rd</sup>) quarter of 2017. The NOV notified Respondent that it was required to provide public notice of the violation.

7. On November 7, 2018, an NOV was issued to Respondent by NMED for exceeding the TTHM MCL LRAA at the TTHM-1 (Programs Building) and HAA5-1 (Laundry) sampling sites during the fourth (4<sup>th</sup>) quarter of 2017 and the first (1<sup>st</sup>), second (2<sup>nd</sup>), and third (3<sup>rd</sup>) quarters of 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

8. On April 17, 2017 an NOV was issued to Respondent by NMED for exceeding the TTHM MCL LRAA at the TTHM-1 (Programs Building) and HAA5-1 (Laundry) sampling sites during the fourth (4<sup>th</sup>) quarter of 2018 and the first (1<sup>st</sup>) quarter of 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

## **VIOLATION 1**

9. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.64(b)(2)(i) and 141.620(d)], which defines the Total Trihalomethanes (TTHM) Maximum Contaminant Level (MCL) of 0.080 mg/L and establishes compliance with the MCL for TTHM is determined by calculating the Locational Running Annual Average (LRAA). Respondent exceeded the TTHM MCL LRAA during the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) quarter of 2017 and first (1<sup>st</sup>), second (2<sup>nd</sup>), third (3<sup>rd</sup>), and fourth (4<sup>th</sup>) quarters of 2018, and first (1<sup>st</sup>) quarter of 2019.

## **RETURN TO COMPLIANCE**

Based upon the foregoing, Respondent is hereby ordered to comply with the following:

10. By October 31, 2020, comply with 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.64(b)(2)(i) and 141.620(d)], and provide drinking water with concentrations of TTHM below the MCL of 0.080 mg/L at the TTHM-1 (Programs Building) and HAA5-1 (Laundry) sampling sites.

11. By October 31, 2021, comply with 20.7.10.100 NMAC, NMAC [incorporating 40 C.F.R. § 141.64(b)(2)(i) and 141.620(d)], and have a LRAA for TTHM below the MCL of 0.080 mg/L at the TTHM-1 (Programs Building) and HAA5-1 (Laundry) sampling sites.

12. Submittals made pursuant to paragraphs 10 through 11 of this Order shall be sent by certified mail with return receipt requested to the following:

Maria J. Medina, Enforcement Coordinator  
New Mexico Environment Department  
Drinking Water Bureau  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Or

Email: [maria.medina@state.nm.us](mailto:maria.medina@state.nm.us)

**If respondent fails to comply with the requirements of paragraphs 10 through 12 of this order, the Secretary of NMED may assess additional civil penalties not to exceed one thousand dollars (\$1,000) for each instance of noncompliance with this order.**

#### **RIGHT TO ANSWER AND REQUEST A HEARING**

Pursuant to NMSA 1978, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at [www.env.nm.gov](http://www.env.nm.gov)), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matters upon which this Order is based; (b) contends that Respondent is entitled to prevail as a matter of law; or (c) otherwise contests the appropriateness of this Order, Respondent may mail or deliver within thirty (30) days of receipt of this Order a written Request for Hearing at the following address:

Hearing Clerk

New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200.A(2)(d) NMAC.

The Request for Hearing shall include an Answer. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and the Respondent may deny the allegation on that basis. Any allegation in this Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

Respondent's Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and correct. 20.1.5.200.A(2)(c) NMAC.

#### **FINALITY OF ORDER**

Pursuant to NMSA 1978, §§ 61-33-10.E and § 74-1-10.E, this Order shall become final unless the Respondent files a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

#### **SETTLEMENT CONFERENCE**

Whether or not a Request for Hearing has been filed, Respondent may confer with the NMED concerning settlement of this Order. The NMED encourages settlement consistent with the provisions and objectives of the EIA and the DW Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a Request for Hearing and Answer nor alter the deadline imposed for compliance with the mandate of this Order. Settlement discussion may

be pursued as an alternative to, and simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

A Stipulated Final Order shall finalize any settlement reached by the parties. The Stipulated Final Order must resolve all issues raised in this Order, shall be final and binding on all parties, and may not be appealed.


To explore the possibility of settlement in this matter, contact Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, P.O Box 5469, Santa Fe, New Mexico 87502-5469, (505) 476-8629.

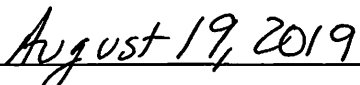
### **COMPLIANCE WITH OTHER LAWS**

Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC and 20.7.4 NMAC which remain in full force and effect. Issuance of this Order is not an election by the NMED to forgo any civil or criminal action otherwise authorized under the EIA.

### **TERMINATION**

This Order shall terminate when all requirements of this Order have been met and the NMED provides notification of termination in writing, or when the Secretary approves a Stipulated Final Order.

  
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Rebecca Roose  
Division Director  
Water Protection Division  
P.O Box 5469  
Santa Fe, New Mexico 87502-5469

  
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Date